

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DBM CONTRACTORS, INC.,)
)
 Appellant,) PCHB NO. 87-161
)
 v.)
)
 PUGET SOUND AIR POLLUTION CONTROL) FINAL FINDINGS OF FACT,
 AGENCY,) CONCLUSIONS OF LAW
) AND ORDER
 Respondent.)
)

THIS MATTER, the appeal of a notice and order of civil penalty of \$500 for outdoor burning, allegedly in violation of Section 8.0510 of respondent's Regulation I, came on before the Board, Lawrence J. Faulk (Presiding), and Judith A. Bendor (Member), in Seattle, Washington on December 14, 1987. Wick Dufford (Chairman) has reviewed the record. Respondent Agency elected a formal hearing. Lettie Hylarides reported the proceedings.

DBM Contractors, Inc., was represented by its Safety Director, William Richeson, appearing pro se. Respondent Puget Sound Air Pollution Control Agency was represented by its attorney, Keith D. McGoffin.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard.

3 From the testimony, evidence and contentions of the parties, the
4 Board makes these

5 FINDINGS OF FACT

6 I

7 The Puget Sound Air Pollution Control Agency (PSAPCA) is an
8 activated air pollution control authority, empowered to enforce
9 outdoor open burning regulations in a multi-county area which includes
10 Snohomish County and the site of the instant open burning incident.

11 The agency has filed with the Board a certified copy of its
12 Regulation I and all amendments thereto, of which we take official
13 notice.

14 II

15 DEM Contractors, Incorporated, is a general contractor with
16 offices in Federal Way, Washington, at 1220 South 356th.

17 III

18 On March 6, 1987, a fire fighter from the Sumner Fire Department
19 received a complaint about an outdoor fire at or near Highway 167 and
20 8th Street, Sumner, Washington. The Sumner Fire Department responded
21 to the complaint and proceeded to the scene of the fire. There he
22 observed two burning piles of debris which he estimated to be eight
23 feet high and 10 feet across each. The piles contained scrap plywood,
24 and laminated beams. The fire department extinguished the fires and
25

26 FINAL FINDINGS OF FACT,
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1 discussed burning regulations with the people attending the fire. The
2 fire fighter determined that the fires had been started by employees
3 of DBM Contractors, Inc.

4 IV

5 On March 9, 1987, PSAPCA was contacted by Sumner Fire Department
6 concerning the fires extinguishd on March 6, 1987. PSAPCA had in its
7 files no record of a permit authorizing the burning of processed wood
8 products by DBM.

9 V

10 PSAPCA mailed a Notice of Violation to DBM Contractors on March 9,
11 1987, asserting a violation of Regulation I, Section 8.05 by causing
12 or allowing an outdoor fire other than land clearing or residential
13 burning without prior written approval from PSAPCA. Subsequently, on
14 May 29, 1987, the agency issued Notice and Order of Civil Penalty No.
15 6686 assessing a fine of \$500 for the incident. On July 1, 1987, DBM
16 Contractors filed a notice of appeal with this Board.

17 VI

18 DBM Contractors, Inc., does not contest the fact that the fires
19 were burning, nor that the fires contained plywood and laminated
20 beams. The company's contention is that its management knew nothing
21 about the fires on March 6, 1987, and did not authorize the fires,
22 and therefore they should not be held responsible for them.

1 We find, however, the burning was conducted by DBM employees.

2 VIII

3 Any Conclusion of Law which is deemed a Finding of Fact is hereby
4 adopted as such

5 From these Findings, the Board comes to these

6 CONCLUSIONS

7 I

8 The Board has jurisdiction over these persons and these matters.
9 Chapter 70.94 and 43.21B RCW

10 II

11 The Legislature has enacted the following policy on outdoor fires:

12 It is the policy of the state to achieve and maintain
13 high levels of air quality and to this end to minimize
14 to the greatest extent reasonably possible the burning of
15 outdoor fires. Consistent with this policy, the
16 legislature declares that such fires should be allowed
17 only on a limited basis under strict regulations and
18 close control. RCW 70.94.740.

17 III

18 PSAPCA's Regulation I, Section 8.05 provides:

19 It shall be unlawful for any person to cause
20 or allow any outdoor other than land clearing
21 burning or residential burning except under the
22 following conditions:

23 (1) Prior written approval has been issued by
24 the control officer or Board. . . .

IV

We conclude that the fires in question were started by employees of the appellant without prior written approval of respondent agency. The burning of processed wood products is outside the definition of both land clearing burning and residential burning. Sections 1.07(y) and (pp). Consequently, we hold that the company violated Section 8.05.

V

The civil penalty assessed here (\$500) is not the highest penalty that could have been assessed pursuant to the state Clean Air Act, RCW 70.94.431(1). We note that the purpose of civil penalties is not retribution, but to influence behavior - both of the violators and the regulated public generally.

Considering all the facts and circumstances, we believe the penalty assessed in this instant case is appropriate.

VI

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

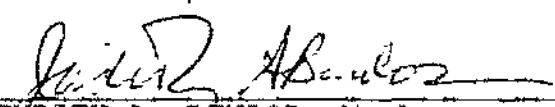
Notice and Order of Civil Penalty No. 6686 in the amount of \$500
is affirmed.

DONE this 14th day of April, 1988.

POLLUTION CONTROL HEARINGS BOARD

 4/14/88
LAWRENCE J. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

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